CHEW CHEE SUN v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) July 4, 1975]
[Singapore — Magistrate's Appeal No. 108 of 1974]

Bribery and Corruption — Charge of corruption — Onus of proof — Prevention of Corruption Act (Cap. 104), ss. 6, 8 and 13.

Evidence — Charge of corruption — Onus of proof.

This was an appeal against the conviction of the appellant on two charges of corruption under the Prevention of Corruption Act (Cap. 104). The appellant was in the employment of the Ministry of National Development and it was proved that he had received two sums of money from a company, which had a construction contract with a department of the Ministry. The defence was that the two sums were paid to and received by the appellant as the agent of his brother in connection with the sale of a piece of land in Penang.

Held, dismissing the appeal, the appellant had failed to discharge on a balance of probabilities the onus of showing that the qualification was not paid or given or received corruptly as a reward for doing or forbearing to do an act in relation to the affairs of the Government and therefore the appellant was rightly convicted of the offences.

Case referred to:-

(1) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89 at p. 90.

MAGISTRATE'S APPEAL.

J. H. R. Newey, Q.C. and *Datuk David Marshall* for the appellant.

Warren Khoo and *Alan Wong* for the respondent.

Wee Chong Jin C.J.: The appellant was charged before the First District Court with two offences under section 6(a) of the Prevention of Corruption Act (Cap. 104). He was convicted on both charges and sentenced to eighteen months imprisonment on each charge, the sentences to run concurrently. He was also ordered to pay a penalty of $5,000 under section 13 of the said Act. He appealed against the convictions and sentences and at the conclusion of the appeal I dismissed it. I now proceed to give my reasons for dismissing the appeal.

The two charges read as follows: —

"1st Charge: You, Chew Chee Sun, on or about the 3rd day of January 1973 at the Urban Renewal Department, Singapore being an agent, to wit, an Acting Executive Architect/Planner in the employment of the Ministry of National Development, Singapore corruptly obtained from one Cheong Kum Seng for himself a gratification of a sum of Dollars Three Thousand ($3,000) as an inducement for showing favour to M/s. Cheong Kum Seng Construction Private Limited in relation to his principal's affairs by adopting a lenient supervision over the work carried out by the said construction firm for the Robinson Road Landscaping Project, and you had thereby committed an offence under section 6(a) of the Prevention of Corruption Act, Cap. 104."

"2nd Charge: You, Chew Chee Sun, on or about the 14th day of March 1973 at the Urban Renewal Department, Singapore, being an agent, to wit, an Acting Executive Architect/Planner in the employment of the Ministry of National Development, Singapore, corruptly obtained from one Cheong Kum Seng, for himself a gratification of a sum of Dollars Two Thousand ($2,000) as an inducement for showing favour to M/s. Cheong Kum Seng Construction Private Limited in relation to his principal's affairs by adopting a lenient supervision over the work carried out by the said construction firm for the Robinson Road Landscaping Project, and you had thereby committed an offence under section 6(a) of the Prevention of Corruption Act, Cap. 104."

Section 6(a) of the Prevention of Corruption Act (Cap. 104) provides as follows: —

"If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having after the coming into operation of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ... he shall be guilty of an offence under this Act...."

In the same Act there is a provision which reverses the burden of proof which ordinarily lies upon the prosecution and that is to be found in section 8 which provides as follows: —

"Where in any proceedings against a person for an offence under section 5 or 6 of this Act, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, such gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved."

Although the trial was a long and protracted one lasting twenty-five hearing days spread over five months, the prosecution evidence that the gratification, namely, the sums of $3,000 and $2,000 mentioned in the charges were paid or given to or received by the appellant and that at the time of the payment, gift or receipt he was in the employment of the Ministry of National Development was never disputed by the defence. Also, it was never disputed that the gratification was paid by or received from one Cheong Kum Seng, the managing director of a private limited company known as Cheong Kum Seng Construction Private Limited, which at the material dates, had a construction contract with a department of that Ministry. His defence was that the two sums were paid to and received by him as the agent of his brother in connection with the sale of a piece of land in Penang on which stood two dilapidated one-storey buildings. This property did not belong to his brother but to his sister who was, at the material time, living in Perak and had expressed a wish to sell it at a profit.

The other undisputed facts are these. The appellant is an architect by profession who had obtained his professional degree at Melbourne University, Australia in 1968. He joined the Ministry of National Development as an architect/planner attached to the Urban Renewal Department on March 16, 1971 and on October 1, 1972 was made Acting Executive Architect/Planner. His duties included planning, design and supervision of projects assigned to him. One of the projects of the Urban Renewal Department in late 1972 was the Robinson Road Landscaping Project of which the appellant was the project architect. As the project architect in charge of the Robinson Road Landscaping Project his duties were to design the plans, prepare tender documents, carry out periodic supervision of the work at the site and do administrative work in connection with the project.

Tenders for this project closed on December 5, 1972. 12 tenders were received the lowest of which was by a private limited company known as Cheong Kum Seng Construction (Pte) Ltd. of which Cheong Kum Seng, the principal prosecution witness, was the managing director. The tenders were opened on December 5, 1972 and two days later a Tender Report, signed by the Quantity Surveyor, to the Urban Renewal Deparment (Exhibit D6), recommending acceptance of the lowest tender was submitted to the Per-

manent Secretary, Ministry of National Development. The appellant saw the file copy of the Tender Report on the same day. On December 15, 1972 the Quantity Surveyor, on the directions of the Permanent Secretary, sent the Tender Report containing the tender recommendation to the Chairman, Housing and Development Board for the approval of the Board. On December 27, 1972 the Secretary to the Housing and Development Board replied in writing that the Board agreed to accept the lowest tender submitted by Cheong Kum Seng and the written reply was seen by the appellant the following day. The successful tenderer was informed in writing on December 29, 1972 that its tender had been accepted.

Where an accused person is charged under section 6(a) of the Prevention of Corruption Act to which section 8 applied, the onus lies upon the prosecution to prove three factual ingredients *viz.* (1) that a gratification was paid or given to or received by the accused person; (2) that at the time of the payment, gift or receipt the accused person was in the employment of the Government or a department thereof or a public body and (3) that the payment, gift or receipt was by or from a person who at the time of the payment, gift or receipt had or sought to have dealings with the Government or that department of Government or that public body. Upon proof of these three ingredients the existence of the fourth ingredient, *viz.* (4) that the gratification was paid or given or received corruptly as an inducement of reward for doing or forbearing to do an act in relation to the affairs of the Government or that department of Government or that public body, is to be presumed "unless the contrary is proved" (see *Public Prosecutor* v. *Yuvaraj*[1]).

From the undisputed facts in the present case there can be no doubt that the prosecution had clearly proved the existence of the aforesaid first three factual ingredients of the two offences of which the appellant was charged and found guilty. The onus thus lay upon the appellant to disprove the existence of the fourth ingredient which is a necessary factual ingredient of the two offences. The onus is discharged if the court considers that upon the evidence before it it is more likely that not that that fourth factual ingredient does not exist and the test to be applied is the same as that applied in civil proceedings, *viz.* the balance of probabilities (see *Public Prosecutor* v. *Yuvaraj, supra*).

In the present case the appellant gave evidence that in June 1972, a few months before the tender of Cheong Kum Seng Private Limited was accepted, he had been introduced to Cheong Kum Seng at the flat of a Mr. Tham whom he referred to as his "colleague". The appellant was then living at a flat on an upper floor. He said that at that meeting Cheong Kum Seng asked him about the procedure to tender for Urban Renewal Department jobs and on learning that he was from Penang, asked him whether he knew "of any small piece of land in Penang where I (Cheong Kum Seng) can start". He told Cheong Kum Seng of a piece of land in the heart of the city of Penang about which his brother had spoken to him and was asked to find out more from his brother. He followed up this request by writing to his brother, Chew Chee Kin that Cheong Kum Seng, a Singaporean was interested in the land.

He said he next saw Cheong Kum Seng on the evening of December 27, 1972 at his own flat and after some general conversation Cheong Kum Seng said he "was very interested to develop that piece of land in Penang" and requested him to write to his brother "quickly for the site plan and option letter". He said that he wrote a letter to his brother that same evening asking for "site plan and option in respect of this land" but did not mention Cheong Kum Seng in his letter. On January 2, 1973 he received a letter from his brother in which was enclosed a photostat copy of a site plan and on the same day he gave the letter and enclosure to Cheong Kum Seng who had gone to his office. Cheong Kum Seng told him that the deposit would be given to him later because the Robinson Road Landscaping work was starting soon and so he (Cheong Kum Seng) would be very tight as regards money.

The defence produced a copy of the letter which the appellant alleged he had received from his brother, Chew Chee Kin, on January 2, 1973. It is a vital document which, if genuine, would be strong corroboration of the appellant's defence that the $5,000 which he received from Cheong Kum Seng was a down payment towards the purchase price for the land in Penang. The copy of the alleged letter reads: —

"

30-12-72

Dear Brother Chee Sun,

This is to authorise you to sell the property of Holding No. 52 part 6, T.S. 10 N.E.D. Penang for the price of Dls. Twenty Two Thousand $22,000 only.

Deposit shall be $5,000 down payment and the balance to be paid within three weeks from the date when the deposit of down payment is paid, otherwise the down payment will be forfeited without further notice.

Enclose herewith is the site plan for you.

How about your friend Mr. Cheong Kum Seng who is interested to buy land in Penang.

Please give me your early reply.

Your brother,
Sgd: ? ."

According to the appellant, on or about February 5, 1973 Cheong Kum Seng came to his office and gave him $3,000 saying "I can only raise $3,000 as part payment of deposit" and would pay the $2,000 one month later. The appellant replied that it was a matter between Cheong Kum Seng and his brother and that he would write to his brother, which he did the next day. His brother replied agreeing to the terms and instructed him to send $1,500 to a younger brother studying in Taiwan and to keep the balance of $1,500 till he came down to Singapore at the end of the month.

On or about 26th March 1973 Cheong Kum Seng came to his office and gave him $2,000 saying "now I complete payment of the deposit". Nothing else was discussed on that occasion. He did not issue any receipts to Cheong Kum Seng for the two sums he had received. After receiving the $2,000 he wrote to inform his brother and received a reply. In cross-examination, when questioned as to the contents of his brother's letter, he said: —

"Roughly he said, 'Ali right'. He told me to send another $1,500 to my brother in Taiwan. The balance of $500 he asked me to regard it as a repayment to me for the money he had taken from me previously. As far as I can remember that is all he said."

He said he made no arrangements as to how and where the balance of $17,000 was to be paid nor did he tell Cheong Kum Seng what would happen if the balance was paid within the three-week period as stipulated in the letter of December 30, 1972. He said he would inform his brother if the balance was paid and then it would be a matter between Cheong Kum Seng and his brother as he was not concerned with the completion of the sale.

He said that on April 26 (more than three weeks after the $2,000 payment) Cheong Kum Seng was in his office about the landscaping project and he asked Cheong Kum Seng "How is it that there is no news about the balance of the payment". He said Cheong Kum Seng replied that as his money position was tight he was unable to complete the purchase and asked that the deposit money be returned without any deductions. He told Cheong Kum Seng he would try to ask his brother to do so. He wrote "a small note" to his brother who replied about two weeks later that the deposit had to be forfeited as other offers had been rejected. On May 9, 1973 he conveyed his brother's answer to Cheong Kum Seng who appeared disappointed and asked him to contact his brother to reconsider. He did not do so. Then on June 6, 1973 Cheong Kum Seng saw him at his office and angrily asked him for a receipt "on the forfeiture of the money". He replied that it was his brother's matter and was asked by Cheong Kum Seng to obtain a receipt from his brother. He did not write to his brother because, while he was considering whether or not to write, the Corrupt Practices Investigation Bureau had started questioning him and he felt depressed and did not want to be involved in the matter.

However, on June 8, 1973 he said he wrote to his brother to send to him a copy of the site plan and the option letter (letter of December 30, 1972) because Cheong Kum Seng wanted it. When questioned why he did not also in the same letter ask his brother for a receipt for the $5,000 he replied thus:

"When Cheong Kum Seng asked for these documents, he did not ask for the receipt."

At the trial several witnesses were called to give evidence for the defence including the appellant's brother, Chew Chee Kin. Neither Chew Chee Kin nor the appellant kept any of the letters that passed between them in connection with the land transaction except that Chew Chee Kin allegedly made and kept a copy of the "option" letter dated December 30, 1972. Chew Chee Kin told more or less the same story as the appellant with regard to the events that led up to his writing the "option" letter of December 30, 1972 and the subsequent events relating to the land transaction.

The trial judge found that the defence that the $5,000 received by the appellant from Cheong Kum Seng was a deposit for the purchase of a piece of land by Cheong Kum Seng from the appellant's brother was a fabricated one. The trial judge, after observing that the letters between the two brothers which were material to the defence case could not be produced at the trial, found that the so called "option" letter of December 30, 1972 never existed.

It is clear, if the findings of fact of the trial judge are sustainable on the evidence before him, that the appellant had failed to discharge the onus of proof which lay on him that the $5,000 received by him from Cheong Kum Seng had not been received with a corrupt motive. It was strenuously argued at the appeal, *inter alia*, that on all the evidence the trial judge was wrong in rejecting the evidence of the appellant and his brother and the other defence witnesses.

I rejected that submission. I am in entire agreement with the trial judge's finding that the defence story was a fabricated one. It seems to me almost inconceivable that an intending purchaser of land would make a deposit payment of money exceeding 20% of the purchase price without obtaining a receipt or a written acknowledgment, particularly where the payment was in cash and not made direct to the owner of the land. It seems to me extremely improbable that anyone would make a substantial deposit payment to buy immovable property in a foreign country without personal knowledge of that property and without particulars of the area of that property and its exact location. It also seems to me highly improbable that a building contractor would bind himself to purchase property in a foreign country with the intention of developing it without making some inquiries as to whether or not the property could be developed. Again it seems to me almost inconceivable, bearing in mind the condition in the alleged option letter that the balance of $17,000 had to be paid "within three weeks from the date of the down payment is made otherwise the downpayment will be forfeited without further notice" and bearing in mind the fact that the land was in a foreign country, that Cheong Kum Seng after paying to the appellant the downpayment would not seek, at the very least, to find out from the appellant the steps he ought to take to complete the sale and purchase.

As was said by Lord Diplock (delivering the judgment of the Privy Council in *Public Prosecutor* v. *Yuvaraj, supra*): —

"The policy which underlies section 14 of the Prevention of Corruption Act 1961 (of Malaysia) is, in their Lordships' view clear. The section is limited to persons 'in the employment of any public body'. No similar presumption applies to agents of private principals. Corruption in the public service is a grave social evil which is difficult to detect, for those who take part in it will be at pains to cover their tracks. The section is designed to compel every public servant so to order his affairs that he does not accept a gift in cash or in kind from a member of the public except in circumstances in which he will be able to show clearly that he had legitimate reasons for doing so."

In our case the presumption under our section 8 is less wide and is limited to acceptance of a gift in cash or in kind "from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body". In my opinion the observations as regards corruption in the public service made by the Privy Council apply with much greater force in Singapore.

It was for these reasons that I dismissed the appellant's appeal.

Appeal dismissed.

Solicitors: *David Marshall.*